

Chapter No. 398
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HOUSE BILL NO. 1525

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1525

AN ACT TO AMEND SECTION 25-7-9, MISSISSIPPI CODE OF 1972, TO SET THE FEE THAT CHANCERY CLERKS SHALL CHARGE FOR A COMMITMENT ACTION; TO AMEND SECTION 41-21-63, MISSISSIPPI CODE OF 1972, TO ALLOW THE COMMITMENT OF PERSONS WITH MINOR CRIMINAL CHARGES PENDING AS LONG AS THERE ARE NOT FELONY CHARGES PENDING; TO AMEND SECTION 41-21-65, MISSISSIPPI CODE OF 1972, TO SIMPLIFY AND MAKE UNIFORM THE BEGINNING OF THE COMMITMENT PROCESS; TO ALLOW CHANCELLORS TO DECIDE IF THEY WANT TO HEAR A CASE OF A PERSON WHO IS FOUND IN THEIR COUNTY, OR TRANSFER THE CASE TO THE COUNTY OF RESIDENCE; TO SIMPLIFY THE AFFIDAVIT PROCESS BY GENERALIZING THE INFORMATION REQUIRED FOR THE AFFIDAVIT, REQUIRING THE CHANCERY CLERK TO PROVIDE THE AFFIANT WITH A SIMPLE, ONE-PAGE FORM DEVELOPED BY THE DEPARTMENT OF MENTAL HEALTH TO FILL OUT AS AN AFFIDAVIT, AND PREVENTING CHANCERY CLERKS FROM REQUIRING THE AFFIANT TO HIRE AN ATTORNEY; TO PREVENT "ADD ON" FEES BEING CHARGED TO THE AFFIANT AND ALLOW THE FILING FEE TO BE WAIVED AT THE AFFIANT'S REQUEST; TO REMOVE THE REQUIREMENT OF FILING A BOND; TO PROVIDE FOR PUNISHMENT WITH CRIMINAL CHARGES AND CONTEMPT FOR INDIVIDUALS WHO FILE AN INTENTIONALLY FALSE AFFIDAVIT FOR COMMITMENT; TO AMEND SECTION 41-21-67, MISSISSIPPI CODE OF 1972, TO PROHIBIT PERSONS WAITING FOR COMMITMENT FROM BEING HELD IN JAIL; TO AMEND SECTION 41-21-71, MISSISSIPPI CODE OF 1972, TO ALLOW THE JUDGE TO DISMISS THE AFFIDAVIT WITHOUT THE NEED FOR A HEARING IF THE EXAMINERS DETERMINE A PERSON IS NOT IN NEED OF TREATMENT; TO AMEND SECTION 41-21-79, MISSISSIPPI CODE OF 1972, TO SET A CAP ON THE TOTAL AMOUNT THAT MAY BE CHARGED FOR ALL OF THE COSTS INCIDENTAL TO THE COURT PROCEEDINGS; TO AMEND SECTION 41-31-15, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 25-7-9, Mississippi Code of 1972, is amended as follows:

25-7-9. (1) The clerks of the chancery courts shall charge the following fees:

(a) For the act of certifying copies of filed documents, for each complete document\$ 1.00

(b) (i) Recording each deed, will, lease, amendment, subordination, lien, release, cancellation, order, decree, oath,

etc., per book and page listed where applicable; for the first fifteen (15) pages \$ 10.00

 Each additional page \$ 1.00

 (ii) Sectional index entries per section or subdivision lot \$ 1.00

 (c) Recording each deed of trust, for the first fifteen (15) pages \$ 15.00

 Each additional page \$ 1.00

 Sectional index entries per section or subdivision lot \$ 1.00

 (d) (i) Recording oil and gas leases, cancellations, etc., including indexing in general indices; for the first fifteen (15) pages \$ 18.00

 Each additional page \$ 1.00

 (ii) Sectional index entries per section or subdivision lot \$ 1.00

 (iii) Recording each oil and gas assignment per assignee \$ 18.00

 (e) (i) Furnishing copies of any papers of record or on file:

 If performed by the clerk or his employee, per page \$.50

 If performed by any other person, per page \$.25

 (ii) Entering marginal notations on documents of record \$ 1.00

 (f) For each day's attendance on the board of supervisors, for himself and one (1) deputy, each \$ 20.00

 (g) For other services as clerk of the board of supervisors an allowance shall be made to him (payable semiannually at the July and January meetings) out of the county treasury, an annual sum not exceeding \$3,000.00

 (h) For each day's attendance on the chancery court, to be approved by the chancellor:

For the first chancellor sitting only, clerk and two (2) deputies, each \$ 50.00

For the second chancellor sitting, clerk only \$ 50.00

Provided that the fees herein prescribed shall be the total remuneration for the clerk and his deputies for attending chancery court.

(i) On order of the court, clerks and not more than two (2) deputies may be allowed five (5) extra days for each term of court for attendance upon the court to get up records.

(j) For public service not otherwise specifically provided for, the chancery court may by order allow the clerk to be paid by the county on the order of the board of supervisors, an annual sum not exceeding \$5,000.00

(k) For each civil filing, to be deposited into the Civil Legal Assistance Fund \$ 5.00

The chancery clerk shall itemize on the original document a detailed fee bill of all charges due or paid for filing, recording and abstracting same. No person shall be required to pay such fees until same have been so itemized, but those fees may be demanded before the document is recorded.

(2) The following fees shall be a total fee for all services performed by the clerk with respect to a complaint which shall be payable upon filing and shall accrue to the chancery clerk at the time of filing. The clerk or his successor in office shall perform all duties set forth without additional compensation or fee to wit:

- (a) Divorce to be contested \$75.00
- (b) Divorce uncontested \$30.00
- (c) Alteration of birth or marriage certificate . \$25.00
- (d) Removal of minority \$25.00
- (e) Guardianship or conservatorship \$75.00
- (f) Estate of deceased, intestate \$75.00
- (g) Estate of deceased, testate \$75.00

(h) Adoption	\$75.00
(i) Land dispute	\$75.00
(j) Injunction	\$75.00
(k) Settlement of small claim	\$30.00
(l) Contempt in child support	\$75.00
(m) Partition suit	\$75.00
(n) Any cross-complaint	\$25.00
(o) <u>Commitment</u>	<u>\$75.00</u>

(3) For every civil case filed, an additional fee to be deposited to the credit of the Comprehensive Electronic Court Systems Fund established in Section 9-21-14 \$10.00

(4) Cost of process shall be borne by the issuing party. Additionally, should the attorney or person filing the pleadings desire the clerk to pay the cost to the sheriff for serving process on one (1) person or more, or to pay the cost of publication, the clerk shall demand the actual charges therefor, at the time of filing.

SECTION 2. Section 41-21-63, Mississippi Code of 1972, is amended as follows:

41-21-63. (1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2) The chancery court, or the chancellor in vacation shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges pending.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

SECTION 3. Section 41-21-65, Mississippi Code of 1972, is amended as follows:

41-21-65. (1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides; provided, however, that a chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence. * * * The affidavit shall set forth the name and address of the proposed patient's nearest relatives, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. Because of the emergency nature of those affidavits, at the affiant's request the chancery clerk shall provide the affiant with the one-page affidavit form developed by the Department of Mental Health, which the affiant may complete and file without the need for consulting or retaining an attorney. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this subsection, which shall be used in all counties in the state. No chancery clerk

shall require an affiant to retain an attorney for the filing of an affidavit under this section.

(3) The chancery clerk may charge the affiant a total fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law.

(4) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

SECTION 4. Section 41-21-67, Mississippi Code of 1972, is amended as follows:

41-21-67. (1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into his or her custody the person alleged to be in need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31 and for examination as set forth in Section 41-21-69. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. *If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.*

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. * * * However, * * * any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any available regional mental health facility or any other available suitable location as the court may so designate pending an admission hearing and may, if necessary, order a peace officer or other person to transport the respondent to that mental health

facility or suitable location. Any respondent so retained may be given such treatment * * * as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the Department of Mental Health, and shall not be held in jail, *unless the court finds that there is no reasonable alternative.*

(5) Whenever a licensed physician, psychologist, nurse practitioner or physician assistant certified to complete examinations for the purpose of commitment has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or * * * may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours or the end of the next business day of the chancery clerk's office. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician, psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding. Any respondent so held may be given such treatment * * * as indicated by standard medical practice. Persons acting in good faith in connection with the detention of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

SECTION 5. Section 41-21-71, Mississippi Code of 1972, is amended as follows:

41-21-71. If, as a result of the examination, the examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit without the need for a further hearing. If the chancellor or chancery clerk finds,

based upon the physicians' or the physician and a psychologist's, nurse practitioner's or physician assistant's certificate and any other relevant evidence, that the respondent is in need of treatment and that certificate is filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificate.

SECTION 6. Section 41-21-79, Mississippi Code of 1972, is amended as follows:

41-21-79. The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars (\$400.00).

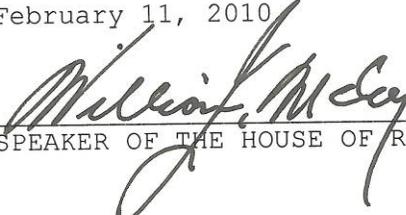
SECTION 7. Section 41-31-15, Mississippi Code of 1972, is amended as follows:

41-31-15. The provisions of the law with respect to the costs of commitment and the cost of support, including the prohibition in Section 41-21-65 regarding the charging of extra fees and expenses to persons initiating commitment proceedings, methods of determination of persons liable therefor, and methods

of determination of financial ability, and all provisions of law enabling the state to secure reimbursement of any such items of cost, applicable to the commitment to and support of the mentally ill persons in state hospitals, shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of any person committed to the state hospitals and maintained in any institution or hospital operated by the State of Mississippi under the provisions of this chapter.

SECTION 8. This act shall take effect and be in force from and after July 1, 2010.

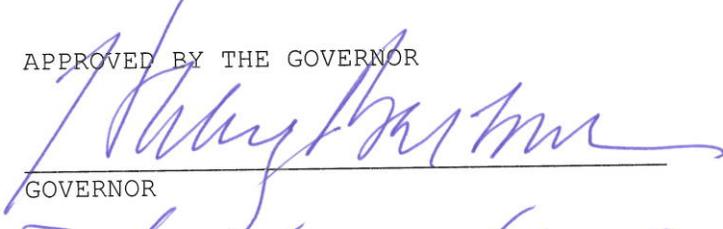
PASSED BY THE HOUSE OF REPRESENTATIVES
February 11, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 10, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3/17/10 